IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

M/s. Desh Raj Tej Raj Through the legal representative of late Desh Raj Kewal Krishan. Versus State of Rajasthan.

S.B. Criminal Revision No. 416/2006 against the order dated 27-1-2006 passed by the Addl. Chief Judicial Magistrate, Sri Karanpur in Criminal Case No. 549/1993.

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Date of Order: May 25, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.J. Gupta, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal revision under Section 397/401 Cr.P.C., the petitioner has assailed the order dated 27-1-2006 passed by the Additional Chief Judicial Magistrate, Sri Karanpur (for short, "the trial Court" hereinafter) in Criminal Case No.549/1993, whereby the trial Court framed the charge against the petitioner for the offence under Section 7 (ii) (v)/16 of the Prevention of Food Adulteration Act, 1954 (for short, "the

Act" hereinafter). Aggrieved by the order impugned framing the charge, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the impugned order. I have also gone though the statements of PW1 S.K. Patni, Public Analyst and PW 2 Shyam Lal, Food Inspector.

It is contended by the learned counsel for the petitioner that PW 1 S.K. Patni, Public Analyst categorically stated that the sample taken from the petitioner was misbranded only on the ground that it contained propyl gallate, otherwise according to PW 1 S.K. Patni, the Public Analyst, the sample conformed to the prescribed standard. Learned counsel submits that rule 59 of the Prevention of Food Adulteration Rules, 1955 (for short, "the Rules, 1955" hereinafter) provides that anti-oxidants not exceeding in concentration mentioned against each, may be added to edible oils and fats except ghee and butter, ethyl gallate and propyl gallate So far as propyl gallate is concerned, the prescribed limit to add anti-oxidant propyl gallate has been prescribed to be 0.01 per cent. In the instant case, the Public Analyst has not specifically stated that the propyl gallate exceeds the permissible limit i.e. 0.01 per cent and, therefore, no offence punishable under Section 7 (ii) v/16 of the

Act is made out against the petitioner.

On careful scrutiny of the statement of PW 1 S.K. Patni, the Public Analyst, it is more than clear that the sample taken from the petitioner conforms to the prescribed standard except that it contained propyl gallate. In the report, it is nowhere indicated that it exceeds the prescribed limit as envisaged under rule 59 of the Rules, 1955. Rule 59 of the Rules 1955 specifically provides addition of anti-oxidant to the extent not exceeding the limit prescribed in the first proviso to Rule 59 of the Rules, 1955. The third proviso thereto further provides that anti-oxidants permitted in Rule 59 may be used in permitted flavouring agents in concentration not exceeding 0.01 per cent. Until and unless the propyl gallate exceeds 0.01 per cent, no offence is made out on the ground of sample containing anti-oxidant.

In this view of the matter, the trial Court fell in error in framing the charge against the petitioner. Even if the evidence of the complainant proposed to be produced remains uncontroverted, prima facie the essential ingredients for the offence punishable under Section 7 (ii) v/16 of the Act are not made out and, therefore, there is no ground to presume that the petitioner committed the offence noticed above. Thus, the impugned order cannot be sustained and is liable to be set aside.

Consequently, the revision petition is allowed. The impugned order dated 27-1-2006 passed by the Additional Chief Judicial Magistrate, Sri Karanpur in Criminal Case No.549/1993 is set aside and the petitioner is discharged of the offence under Section 7 (ii) v/16 of the Act. The stay petition stands disposed of.

(H.R. PANWAR), J.

mcs